



APPENDIX 'A'

Summary of Michigan's criminal procedure 'in due course' and under her 'one-man grand jury' system.[1]

For a clear understanding of the true function of Michigan's 'one-man grand jury' it is essential to consider (1st) her early relinquishment (1850) of a constitutional guarantee (1835) that 'no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury';[2] (2nd) her procedure 'in due course' for magisterial investigation of complaints charging criminal offenses not cognizable by a justice of the peace, for the arrest of offenders, for the conduct of a preliminary examination,[3] and for filing an information by the prosecuting attorney;[4] (3rd) the special proceedings drawn in controversy here, authorized by her law for extraordinary occasions, in which a justice of the peace or a judge of a court of record constitutes himself a 'one-man grand jury' to investigate suspected criminal offenses by examining

[1]

Michigan has two separate codes governing criminal cases: first, her 'Penal Code', defining criminal offenses and providing grades of punishment therefor (Act No. 328, Pub. Acts 1931 [Mich. Stat. Ann. § 28.191 et seq.]) and, second, her 'Code of Criminal Procedure' (Act No. 175 Pub. Acts 1927 [Mich. Comp. Laws 1929, § 17116 et seq.; Mich. Stat. Ann. § 28.841 et seq.]).

[2]

Cf. State Const. 1835, art. 1, § 11; State Const. 1850, art. 6, § 28; State Const. 1908, art. 2, § 19.

[3]

Mich. Code of Criminal Procedure, chap. 6 (Mich. Comp. Laws 1929, § 17193 et seq. [Mich. Stat. Ann. §§ 28.919 et seq.]).

[4]

Michigan Code of Criminal Procedure, chap. 7 § 40 (Mich. Comp. Laws 1929, § 17254 [Mich. Stat. Ann. § 28.980]).

material witnesses;[5] and (4th) the purposes for which Michigan's one-man grand jury law has been invoked.

1

Abolishment of traditional grand jury.

Article 1, § 11, of Michigan's first constitution (1835), following somewhat the pattern of the 5th Amendment to the Federal Constitution, guaranteed that no person should be held for a criminal offense 'unless on the presentment or indictment of a grand jury', except in specified instances; but the Constitution of 1850, article 6, § 28, and Michigan's present Constitution (1908), article 2, § 19, omitted that requirement, and substituted therefor the 'right to be informed of the nature of the accusation'.[6]

"In 1859 the regular calling of grand juries was dispensed with and provisions were made for prosecuting offenders by means of informations filed by the prosecuting attorney, although the grand jury was preserved as an institution of the court, to be invoked by the cir-

[5]

Idem., chap. 7, § § 3, 4, 5, and 6 (Mich. Comp. Laws 1929, § § 17217-17220, incl. [Mich. Stat. Ann. § § 28.943-28.946, incl.]).

[6]

This section of Michigan's bill of rights also guarantees inter alia 'a speedy and public trial', the right 'to be confronted by the witnesses', 'to have compulsory process', and to 'have the assistance of counsel'.

cuit judge if conditions should warrant".[7]

Gillespie's Criminal Law and Procedure, Vol. 1, § 99,
pp. 101-102.

The present law of Michigan^[8] prohibits the drawing of grand juries unless the judge shall so direct.^[9]

2

Procedure in due course.

The Michigan statute charts a course for magistrates when called upon to consider specific complaints charging criminal offenses not cognizable by a justice of the peace, to issue warrants thereon, to conduct preliminary examinations, and when probable cause is satisfactorily shown, to

[7]

The author of this statement observes by way of foot note that the Michigan legislature in 1931 (Act No. 284) provided for a permanent grand jury in every county of 70,000 population and upward, to meet twice in each year; and that in a little over one year, it appeared that the plan was not a success, and the statute was repealed (Act No. 31, Pub. Acts Mich. 1933).

[8]

Section 7 of chapter 7 of the Michigan Code of Criminal Procedure provides that 'grand juries shall not hereafter be drawn, summoned to attend at the sittings of any court within this state, . . . unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court' (Mich. Comp. Laws 1929, § 17221 [Mich. Stat. Ann. § 28.947]).

[9]

This discretion is seldom exercised, for in Michigan the 'one-man grand jury' has in recent years taken the place once occupied by the traditional 16-member grand jury. *People v. McCrea*, 303 Mich. 213 (cert. denied, 318 U.S. 783); *People v. Roxborough*, 307 Mich. 575 (cert. denied, 323 U.S. 749); and *In re Slattery*, 310 Mich. 458 (cert. denied, 325 U.S. 876).

hold the accused for trial in a court of competent jurisdiction.^[10]

Chapter 6 of the code (cited in footnote 10) provides in substance that whenever any complaint shall be made to any magistrate,^[11] that such an offense has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him (§ 2; Comp. Laws § 17194; Stat. Ann. § 28.920).

Upon sufficient showing of the commission of such a crime,^[12] the magistrate is authorized to issue his warrant to bring the accused before him 'to be dealt with according to law' (§ 3, Comp. Laws § 17195; Stat. Ann. § 28.921), and, when the accused person appears, the magistrate is required to set a date for a preliminary examination to be conducted by him (§ 4; Comp. Laws § 17196; Stat. Ann. § 28.922).

Should it appear from the testimony taken at the examination, that the offense charged in the warrant has been committed and that 'there is probable cause to believe the prisoner guilty thereof' (§ 5; Comp. Laws 1929, § 17197; Stat. Ann. § 28.923), the matter of bail shall be considered

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Mich. Code of Cr. Pro., chap. 6 (Mich. Comp. Laws 1929, § 17193 et seq. [Mich. Stat. Ann. § 28.919 et seq.]).

[11]

Such magistrates include the justices of the supreme court, the several circuit judges, courts of record having jurisdiction of criminal causes and all justices of the peace, and other officers named in chapter 4, § 1, of the code (Mich. Comp. Laws 1929, § 17135; Stat. Ann. § 28.860).

[12]

Under a proviso of the foregoing section, however, such warrants are generally issued upon written order of the prosecuting attorney, unless security for costs shall have been filed.

and appropriate action taken, and 'said magistrate shall forthwith bind such defendant to appear before the circuit court of such county or any court having jurisdiction of said cause, for trial (§ 13; Comp. Laws 1929, § 17205; Stat. Ann. § 28,931), and he is required to make a prompt return of his findings to the trial court (§ 15; Comp. Laws 1929, § 17207; Stat. Ann. § 28,933), accompanied by a transcript of the testimony taken at the preliminary examination as required by law (§ 11; Comp. Laws 1929, § 17203; Stat. Ann. § 28,929).

Thereafter, it becomes the duty of the prosecuting attorney of the county to file an information, subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time.^[13]

3

The Michigan 'One-man Grand Jury'.

Chapter 7 of the Code of Criminal Procedure (containing 83 sections), as its caption indicates, regulates all matters pertaining to 'grand juries, indictments, informations and proceedings before trial'. Many of its provisions reenact old statutes (some going back as far as 1846) which in their time governed the traditional grand jury of 16 members,^[14]

[13]

Mich. Code of Cr. Pro., chap. 7, § 40 (Mich. Comp Laws 1929, § 17254 [Mich. Stat. Ann. § 28,980]).

[14]

E.g., § 8 provides grounds for discharging a grand juror (Comp. Laws 1929, § 17222; Stat. Ann. § 28,948); § 9 provides for the preparation of grand juror lists, and for the form of oath to be administered to them (Comp. Laws 1929, § 17223; Stat. Ann. § 28,949); § 11 provides there shall not be less than 16 persons sworn on any grand jury, and for the appointment by the court of one of their number to be foreman (Comp. Laws 1929, § 17225; Stat. Ann. § 28,951), etc., etc.

as well as indictments returned by it.^[15]

Since many of the terms used in this chapter are undoubtedly interchangeable, it may be helpful by way of introduction to note certain statutory definitions relating thereto:

Section 1 of chapter 1 of the code (Comp. Laws 1929, § 17118; Stat. Ann. § 28.843) provides, among other things, that in the act 'the word "indictment" includes information, presentment, warrant and any other formal written accusation'.

The first section of the chapter in question (VII) provides in substance that courts having jurisdiction of criminal causes 'shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon *informations* for crimes, misdemeanors and offenses, to issue writs and process . . . therein as they possess and may exercise in cases of like prosecutions upon *indictments*'

[15]

E.g., § 24 provides a time limitation on the finding of indictments for specified crimes (Comp. Laws 1929, § 17238; Stat. Ann. § 28.964); § 25 provides the manner in which grand jury indictments shall be presented by their foreman to the court (Comp. Laws 1929, § 17239; Stat. Ann. § 28.965); § 30 provides a warrant for the arrest of any person indicted (Comp. Laws 1929, § 17244; Stat. Ann. § 28.970); § 37 provides procedure on arraignment to an indictment (Comp. Laws 1929, § 17251; Stat. Ann. § 28.977); § 43 provides the general form of an indictment (Comp. Laws 1929, § 17257; Stat. Ann. § 28.983), while § 44 provides short forms therefor (Comp. Laws 1929, § 17258; Stat. Ann. § 28.984); § 45 provides what an indictment or information shall contain (Comp. Laws 1929, § 17259; Stat. Ann. § 28.985); § 46 provides for amending an indictment (Comp. Laws 1929, § 17260; Stat. Ann. § 28.986); and § 47 provides that 'no indictment is invalid by reason of any repugnant allegations contained therein, provided that an offense is charged (Comp. Laws 1929, § 17261; Stat. Ann. § 28.987).

(Comp. Laws 1929, § 17215; Stat. Ann. § 28.941). [Emphasis ours].

And the second section thereof applies the law of indictments to 'informations and all prosecutions and proceedings thereon' (Comp Laws 1929, § 17216; Stat. Ann. § 28.942).

The four sections that follow immediately in chapter 7 of the code of criminal procedure,^[16] confer upon 'any justice of the peace, police judge or judge of a court of record' the power and duty to conduct what in Michigan law, as interpreted by the State's highest court,^[17] is known as a 'one-man grand jury' investigation.^[18]

The key that opens the door to exertion of such power is supplied by section 3 of the chapter (Comp. Laws 1929, § 17217; Stat. Ann. § 28.943) and provides:

"Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of

[16]

Mich. Code of Criminal Procedure, chap. 7, § § 3-6, incl. (Mich. Comp. Laws 1929, § § 17217-17220 [Mich. Stat. Ann. § § 28.943-28.946]).

[17]

Oakman v. Recorder of Detroit, 207 Mich. 15; *People v. Butler*, 221 Mich. 626; *In re Petition for Investigation of Recount*, 270 Mich. 328; *People v. O'Hara*, 278 Mich. 281; *In re Hickerson*, 301 Mich. 278; *People v. Wilcox*, 303 Mich. 287; and *In re Slattery*, 310 Mich. 458 (cert. denied, 325 U.S. 876).

[18]

Sections 3 to 6, incl., of chapter 7 of the code, reenacted a statute, Act No. 196, Pub. Acts Mich. 1917, as amended, which enlarged the powers of magistrates to investigate complaints and issue warrants.

any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon application of the prosecuting attorney, or city attorney, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witnesses and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings”.

If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, ‘he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter or proceeding in like manner as upon formal complaint’.[19]

So far as secrecy is concerned, those participating in the inquiry ‘shall be governed by the provisions of law rel-

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Also, if so satisfied, the justice or judge shall report the matter to the proper officials to the end that any public officer so accused may be removed from office. These are all considered to be ‘judicial acts’. In *re* Slattery, 310 Mich. 458; cert. denied, 325 U.S. 876.

ative to grand juries' (*id.*, § 4 [Comp. Laws 1929, § 17218; Stat. Ann. § 28.944]).^[20]

Witnesses who neglect or refuse to appear upon summons of the one-man grand jury 'or to answer questions . . . material to such inquiry' may be punished for contempt,^[21] though the sentence imposed may in judicial discretion be commuted or suspended if the witness appears and answers such questions (*id.*, § 5 [Comp. Laws 1929, § 17219; Stat. Ann. § 28.945]).

And under the provisions of § 6 of chapter 7 of the code (Comp. Laws 1929, § 17220 [Stat. Ann. § 28.946]), a witness who answers questions which might tend to incriminate him, is granted full immunity from prosecution for any offense concerning which he testifies.^[22]

[20]

Hence, it has been held, in *re Slattery*, *supra*, that because of the secrecy of one-man grand jury proceedings, as provided in § 4, chap. 7, a transcript of such proceedings is not included in its entirety in the return to writs of habeas corpus and certiorari issued on petition by a witness who has been jailed for contempt in failing to give proper answers to questions put to him in one-man grand jury proceedings.

[21]

Such a proceeding in contempt is deemed criminal in nature. In *re Wilkowski*, 270 Mich. 787. See: In *re Ward*, 295 Mich. 742; In *re Cohen*, 295 Mich. 748; and In *re Slattery*, *supra*.

[22]

This section of the code is in recognition of the state constitutional mandate that 'no person shall be compelled in any criminal case to be a witness against himself' (Mich. Const. 1908, article 2, § 16). It, of course, does no violence to the 5th or 14th Amendments to the Federal Constitution. *Adamson v. California*, Oct. Term 1946, No. 102, June 23, 1947. Cf. In *re Watson*, 293 Mich. 263. And see: In *re Schnitzer*, 295 Mich. 736; *People ex rel. Roach v. Carter*, 297 Mich. 577; *People v. Reading*, 307 Mich. 616; *People v. Woodson*, 309 Mich. 391; *People v. Norwood*, 312 Mich. 266, in which the court repeatedly refers to such proceedings as those of a 'one-man grand jury'.

Purposes for which Michigan one-man grand jury is employed.

It is at least worthy of note that the one-man grand jury law has been called into play in Michigan only when considered necessary to the public interest, or where it was deemed important to investigate wide-spread corruption in high places.^[23] A few examples will suffice :

Thus, in a comparatively early case, a one-man grand jury investigated a rather vicious combination in restraint of trade intrastate,

People v. Butler, 221 Mich. 626.^[24]

The law in question was later used to investigate, charge,

[23]

In the case at bar, members of the legislature and others, including petitioner, were charged by the one-man grand jury with having conspired to corrupt the legislature of the State of Michigan by means of bribery.

[24]

The court held that under the provisions of § 4, chap. 7, of the code, supra, the stenographer who took the testimony before the grand jury held by a justice of the peace was properly allowed to testify as a witness for the people to the testimony given by some of the defendants before such jury.

and convict^[25] a former mayor of the city of Hamtramck, high-ranking police officers of that municipality, and the proprietors of houses of prostitution, of a common-law conspiracy^[26] to obstruct justice by wilfully and corruptly permitting and allowing them to operate,

People v. Tenerowicz, 266 Mich. 276.

It was employed to investigate, charge, and convict the members of a legislative committee and others who attempted to conduct a recount of votes cast for candidates for state office, of a common-law conspiracy to violate provisions of the State's general election law,

In re Investigation of Recount, 270 Mich. 328;

People v. O'Hara, 278 Mich. 281.

Such a one-man grand jury investigated corrupt practices in Wayne county and charged the prosecuting attorney and his chief investigator, the sheriff and his deputy, together with the operators of houses of ill fame and other illegal enterprises, with a common-law conspiracy to ob-

[25]

To say that this state law is used to 'convict', simply means that testimony of witnesses who appeared before the one-man grand jury, and, under compulsion of the fear of punishment for contempt, admitted their own guilt and implicated others, is offered in evidence at the trial. The law is thus made an effective instrument for evoking truth. For, by way of analogy, 'a state may control such a situation in accordance with its own ideas of the most efficient administration of criminal justice. The purpose of due process is not to protect an accused against a proper conviction'. *Adamson v. California*, *supra*, slip opinion, p. 10.

[26]

Common-law conspiracies are punishable under § 505 of the Michigan Penal Code (Stat. Ann. § 28.773) which makes it a felony to commit any indictable offense at the common law, 'for the punishment of which no provision is expressly made by any statute' of the State.

struct justice by engaging in a 'protection money' scheme, and the defendants were later convicted,

People v. McCrea, 303 Mich. 213; cert. denied (October Term 1942, No. 651), 318 U.S. 783;

People v. Wilcox, 303 Mich. 287; and cases in sequence.

The same basic conspiracy was involved in a later group of cases where a one-man grand jury indicted and the State prosecuted and convicted the proprietors of gambling enterprises (numbers and mutuel), a former mayor of the city of Detroit and other law-enforcing agents, of a common-law conspiracy to obstruct justice by means of systematic bribery,

People v. Roxborough, 307 Mich. 575; cert. denied, 323 U.S. 749; and see cases in sequence, including

People v. Ryan, 307 Mich. 610, and *People v. Reading*, 307 Mich. 616.

And, finally, the same one-man grand jury, investigating corruption in the county of Wayne, charged, and the people convicted police officers of the city of Detroit, the secretary of the mayor of that municipality (*People v. Reading*, *supra*, and the proprietors of 'hand books', of a common-law conspiracy to obstruct justice by means of 'protection money' or bribery,^[27]

People v. Heidt, 312 Mich. 629;

People v. Bartlett, Reading et al., 312 Mich. 648, and cases following in sequence.

[27]

We trust it is permissible to say, in the light of the conspiracy cases cited in this appendix, that were it not for Michigan's one-man grand jury system (however it may be criticized by its opponents), conviction of public officials who have been derelict in their trust, would have been impossible.

APPENDIX 'B'

Schedule of pertinent provisions of Michigan Code of Criminal Procedure relating especially to one-man grand jury investigations.

1

Criminal procedure in due course.^[28]

Chapter II^[29]

“(Section 1). In this act: . . . The word ‘indictment’ includes information, presentment, complaint, warrant and any other formal written accusation” (Mich. Comp. Laws 1929, § 17118 [Mich. Stat. Ann. § 28.843]).

Chapter VI^[30]

“Section 1. The state and accused shall be entitled to a prompt examination and determination by the examining magistrate in all criminal causes and it is hereby made the duty of all courts and public officers having duties to perform in connection with such examination, to bring them to a final determination without delay except as it may be necessary to secure to the accused a

[28]

Michigan Code of Criminal Procedure (Act No. 175, Pub. Acts 1927), chap. 1, § 1; and chap. 6, § § 1-5, incl., 12, 13, 14 and 15 (Mich. Comp. Laws 1929, § § 17118, 17193-17197, incl., 17204-17207, incl., [Mich. Stat. Ann. § § 28.843, 28.919-28.923, incl., and 28.930-28.933, incl.]).

[29]

Chapter I is entitled ‘Definitions’.

[30]

Chapter VI is entitled ‘Examination of Offenders’.

fair and impartial examination” (Mich. Comp. Laws 1929, § 17193 [Mich. Stat. Ann. § 28.919]).

“**Sec. 2.** Whenever complaint shall be made to any magistrate named in section one [1], chapter four [4], of this act,^[31] that a criminal offense not cognizable by a justice of the peace has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him” (Mich. Comp. Laws 1929, § 17194 [Mich. Stat. Ann. § 28.920]).

“**Sec. 3.** If it shall appear from such examination that any criminal offense not cognizable by a justice of the peace has been committed, the magistrate shall issue a warrant directed to the sheriff, . . . reciting the substance of the accusation and commanding him forthwith to take the person accused of having committed such offense and to bring him before such magistrate to be dealt with according to law, and in the same warrant may require such officer to summon such witnesses as shall be named therein” (Mich. Comp. Laws 1929, § 17195 [Mich. Stat. Ann. § 28.921]).

“**Sec. 4.** The magistrate before whom any person is brought on a charge of having committed an offense not cognizable by a justice of the peace, shall set a day for examination not exceeding ten [10] days thereafter, at which time he shall examine the complainant and the witnesses in support of the prosecution, on oath in the presence of the prisoner, in regard to the offense charged and in regard to any other matters.

[31]

Such magistrates include justices of the peace, the justices of the supreme court, the several circuit judges, courts of record having jurisdiction of criminal causes, and other officers of lower grade (Mich. Comp. Laws 1929, § 17135 [Mich. Stat. Ann. § 28.860]).

connected with such charge which such magistrate may deem pertinent” (Mich. Comp. Laws 1929, § 17196 [Mich. Stat. Ann. § 28.922]).

“**Sec. 5.** If it shall appear that an offense not cognizable by a justice of the peace has been committed, and that there is probable cause to believe the prisoner guilty thereof, and if the offense be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable by the magistrate, the prisoner shall be committed to jail for trial” (Mich. Comp. Laws 1929, § 17197 [Mich. Stat. Ann. § 28.923]).^[32]

“**Sec. 12.** After the testimony in support of the prosecution has been given, the witnesses for the prisoner, if he have any, shall be sworn, examined and cross-examined, and he may be assisted by counsel in such examination and in the cross-examination of the witnesses in support of the prosecution” (Mich. Comp. Laws 1929, § 17204 [Mich. Stat. Ann. § 28.930]).

“**Sec. 13.** If it shall appear to the magistrate upon the examination of the whole matter, either that no offense has been committed or that there is not probable cause for charging the defendant therewith, he shall discharge such defendant. If it shall appear to the magistrate upon the examination of the whole matter, that an offense not cognizable by a justice of the peace has been committed and there is probable cause for charging the defendant therewith, said magistrate shall forthwith bind such defendant to appear before the

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Sections 6-11 of this chapter, omitted from the text of this appendix, deal with the conduct of such examinations.

circuit court of such county or any court having jurisdiction of said cause, for trial" (Mich. Comp. Laws 1929, § 17205 [Mich. Stat. Ann. § 28.931]).

"Sec. 14. If, upon the examination of a person charged with a felony or an offense not cognizable by a justice of the peace, it shall appear that the offense charged is not a felony or is an offense cognizable by a justice of the peace, the accused shall not be dismissed but the magistrate shall proceed, as soon as possible, to the trial of said accused in the same manner as if he had been charged with the misdemeanor or offense cognizable by a justice of the peace" (Mich. Comp. Laws 1929, § 17206 [Mich. Stat. Ann. § 28.932]).

"Sec. 15. All examinations and recognizances taken by any magistrate pursuant to any of the provisions of this chapter, shall be forthwith certified and returned by him to the clerk of the court before whom the party charged is bound to appear, and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith by rule of the court" (Mich. Comp. Laws 1929, § 17207 [Mich. Stat. Ann. § 28.933]).

One-Man Grand Jury procedure.^[33]

Chapter VIII^[34]

“Section 1. The several circuit courts of this state, the recorders’ courts and any court of record having jurisdiction of criminal causes, shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeanors and offenses, to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictments” (Mich. Comp. Laws 1929, § 17215 [Mich. Stat. Ann. § 28.941]).

“Sec. 2. All provisions of the law applying to prosecutions upon indictments, to writs and process therein and the issuing and service thereof, to commitments, bail, motions, pleadings, trials, appeals and punishments, or the execution of any sentence, and to all other proceedings in cases of indictments whether in the court of original or appellate jurisdiction, shall, in the same manner and to the same extent as near as may be, be applied to informations and all prosecutions and proceedings thereon” (Mich. Comp. Laws 1929, § 17216 [Mich. Stat. Ann. § 28.942]).

[33]

Michigan Code of Criminal Procedure, chap. 7, §§ 1-6, incl., and § 40 (Michigan. Comp. Laws 1929, §§ 17215 - 17220 [Mich. Stat. Ann. §§ 28.941-28.946, and 28.980]).

[34]

This chapter is entitled: ‘Grand Juries, Indictments, Informations and Proceedings before Trial’.

"Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon the application of the prosecuting attorney, or city attorney in the case of suspected violation of ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings" (Mich. Comp. Laws 1929, § 17217; [Mich. Stat. Ann. § 28.943]).

"Sec. 4. If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter or proceeding in like manner as upon formal complaint. And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of

removal, the said justice or judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charge. And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors" (Mich. Comp. Laws 1929, § 17218 [Mich. Stat. Ann. § 28.944]).

"Sec. 5. Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such justice or judge may require material to such inquiry, shall be deemed guilty of a contempt and shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding sixty days or both at the discretion of the court: Provided, That if such witness after being so sentenced shall appear and answer such question, the justice or judge may in his discretion commute or suspend the further execution of such sentence" (Mich. Comp. Laws 1929, § 17219 [Mich. Stat. Ann. § 28.945]).

"Sec. 6. No person shall upon such inquiry be required to answer any questions the answers of which might tend to incriminate him except upon motion in writing by the prosecuting attorney which shall be granted

by such justice or judge, and any such questions and answers shall be reduced to writing and entered upon the docket or journal of such justice or judge, and no person required to answer such questions upon such motion shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him" (Mich. Comp. Laws 1929, § 17220 [Mich. Stat. Ann. § 28.946]).

"**Sec. 40.** All informations shall be filed during term in the court having jurisdiction of the offense specified therein, after the proper return is filed by the examining magistrate by the prosecuting attorney of the county as informant; he shall subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time of filing the same. Names of other witnesses may be indorsed before or during the trial by leave of the court and upon such conditions as the court shall determine" (Mich. Comp. Laws 1929, § 17254 [Mich. Stat. Ann. § 28.980]).

APPENDIX 'C'

Summary of extradition papers (16-62) on bases of which Governor of New Jersey honored requisition of executive authority of Michigan for surrender of petitioner as fugitive from justice.

Since the extradition papers from Michigan, which formed the bases of her Governor's requisition, cover 44 pages of the printed record (16-60), we deem it useful to submit a short synopsis and abstract of their contents:

1. **Authorization of Michigan's Governor as a designated agent to take Hochstadt into custody (16-61):**

Governor Kelly of Michigan designates and empowers Leo Van Conant to take Robichaud from the New Jersey authorities and return him to Michigan. Dated, June 5, 1944.

2. Authentication of the Michigan Warrant (17):

The Michigan Governor certifies as authentic the Michigan warrant, and requires that Robichaud be arrested and delivered to Van Conant. Dated, June 5, 1944.

3. Application for Requisition (18):

The prosecuting attorney for Ingham county, Michigan, applies to the Michigan Governor for a requisition demanding the Robichaud be taken into custody for having committed the crime of **conspiracy**.

He recommends that Van Conant be designated as the proper agent to return Robichaud to Michigan.

He certifies to the presence of Robichaud in Michigan at the time of the commission of the crime.

He certifies that the proceeding is not instituted to enforce a private claim.

He states that accompanying the application are duly certified copies of the warrant against Robichaud.

He states that accompanying the application are affidavits showing the circumstances of the crime and Robichaud's connection with it.

He states that accompanying the application are affidavits showing Robichaud's presence in Michigan at the time of the commission of the crime.

There is an affidavit accompanying the application showing that Robichaud was in Newark, New Jersey.

Certifies that the officials signing the documents were properly qualified to do so.

Affidavit that the crime was a violation of Michigan laws.

Affidavit showing identification of Robichaud as the person named in the warrant.

This document bears no date.

4. Affidavit of Charles F. Hemans (21):

Hemans was a Michigan lawyer who acted as a lobbyist.

He handled various legislative matters for clients relating to certain bills then pending in the Michigan legislature, and among his clients was the Beneficial Management Corporation of Newark, New Jersey, for whom he acted as a lobbyist during the 1939 legislative session.

He personally knew Robichaud, who represented the Beneficial Management Corporation of Newark; that Robichaud came to Lansing, Michigan, and occupied a room in a hotel during the 1939 session.

Robichaud worked with him during the session in behalf of the Newark company, being interested in certain bills then pending before the legislative, particularly Senate Bill 282, which had been referred to committee. He recited the course of action the bill took until its passage and enactment.

He kept Robichaud informed as to the progress of that bill.

He talked frequently with Robichaud and while the bill was in process of enactment.

He made payments of money to various members of the legislature who are named as party defendants in the warrant issued by Judge Carr on May 2, 1944.

He made the payments to influence the named legislators in their vote on the bill.

Part of the money he paid out was furnished by the Newark company.

He discussed these payments from time to time with Robichaud, his discussions with Robichaud taking place in a Lansing hotel.

He informed Robichaud that others besides the Newark company were making contributions to the same legislators in connection with the bill.

Robichaud 'advised' 'counselled with him,' 'conferred with,' and 'assisted' him in carrying out the agreement to pay certain legislators certain sums of money to influence their votes on the bill.

Robichaud arranged with another company, the Household Finance Corporation, for a contribution of \$3,200 to be given Hemans to turn over to certain legislators for the same purpose.

Robichaud arranged to have Hemans meet the representative of the Household company, a Julian Thompson, and receive from Thompson the \$3,200 in cash.

Hemans received the money from Thompson and paid it to certain legislators.

Hemans consulted Robichaud as to the advisability of paying \$500 to a certain member of the legislature, and Robichaud said to him, 'Go ahead, but keep the amount down,' etc.

He discussed with Robichaud from time to time the payment he had made.

He identified Robichaud's photograph.

Date June 1, 1944.

5. Affidavit of John Danzo (30):

He was employed as a desk clerk in the Olds Hotel, Lansing, Michigan, in 1939-1940.

In the course of his employment he knew Robichaud, and Robichaud registered as a guest at the hotel during the legislative session of 1939.

He identified Robichaud's photograph.

Dated June 1, 1944.

6. Certificate of Leland W. Carr (32):

He is the circuit judge who acted as a one man grand jury.

He certified that 'I have been conducting an inquiry' under the statutes, and that 'as a result of said inquiry there appeared to be probable cause to suspect' that from January 1, 1939 to July 1, 1939, Robichaud unlawfully conspired 'as alleged in a copy of the warrant hereto attached,' etc.

He certifies that the attached copy of the warrant is a true copy of the criminal warrant on file in his office, and that the copy of the docket entry attached is a true copy of that filed in his office.

On information and belief Robichaud is in Newark.

The purpose of this certification was to aid and secure the rendition of Robichaud to be prosecuted for the crime charged.

He certifies that the proceeding was not instituted to enforce a private claim, but to serve public justice.

Dated June 2, 1944.

7. Warrant (34):

This is another certificate of Judge Carr, who acted as a one-man grand jury, in which he certifies that 'Pursuant to an inquiry conducted' under the statutes in a proceeding entitled, 'In the Matter of Complaint of Herbert J. Rushton, Attorney General for the State of Michigan, for a Judicial Investigation concerning certain Criminal Offenses,' it was made to appear to him that there is probable cause to suspect that certain persons committed criminal conspiracy, as the result of which he issued a warrant for their arrest and requiring that they be brought before him as provided by law, etc.

Dated May 2, 1944.

8. Affidavit of Victor C. Anderson (39):

He is the duly elected prosecuting attorney for Ingham county, Michigan.

It is an indictable offense at common law in Michigan to do the things 'charged against Robichaud' in a 'copy of a warrant attached and made part of' his application for extradition.

He sets up the statute which makes it a felony to commit the violation charged.

Dated June 2, 1944.

9. Affidavit of Chief of Police (40):

This is a copy of an affidavit of the Chief of Police of Lansing, Michigan, stating a telegram was received by him from the Newark Chief of Police informing him that Robichaud was arrested and held in Newark awaiting extradition.

Dated June 2, 1944.

10. Affidavit of Herbert J. Ellison (42):

He is the treasurer and auditor of the Hotel Olds, in Lansing, in charge of the hotel records.

States that Robichaud's name appears in the hotel records as a guest on 'divers occasions' between January 1 and July 1, 1939.

Robichaud's address in the records appeared as 15 Washington Street, Newark, and that he represented the Beneficial Management Company.

Dated June 2, 1944.

11. Affidavit of Victor C. Anderson (43):

This is the prosecuting attorney's affidavit stating that Leo Van Conant (duly authorized agent) is attached to the Michigan State Police, and is authorized to return Robichaud from New Jersey 'in connection with a charge now pending against him' in Ingham county.

12. Certificate of Flora G. Dewey (44):

She is the deputy county clerk for Ingham county, and deputy clerk for the circuit court, a court of record with a seal, etc.

She certifies that Victor C. Anderson was the duly elected prosecuting attorney and acted lawfully in such capacity; that his signature to the papers was genuine and made in her presence; that Louis Coash was the properly elected and qualified justice of the peace when he took affidavits, that his signature was genuine, etc.

She certifies that Leland W. Carr was one of the two elected and qualified circuit judges for the 30th judicial district in Michigan and properly acted in that capacity for more than four years prior thereto, and that the signature of Judge Carr on the papers and documents was genuine and made in her presence.

Dated June 2, 1944.

13. Certificate of Judge Carr (46):

He certifies that Flora G. Dewey was duly appointed and qualified as deputy county clerk; that she acted in lawful capacity; and that her signature was genuine.

Dated June 2, 1944.

14. Examination of Charles F. Hemans before Circuit Judge Carr sitting as Examining Magistrate, taken May 31, 1944 (47):

This shows excerpts of testimony given by witness Charles F. Hemans before Circuit Judge Carr on May 29 and May 31, 1944, relating to Robichaud's activities in connection with Senate Bill 282 (Intangible Tax Bill), wherein Hemans stated he received money from Robichaud with which to pay certain legislators.

Attached thereto are various verifications and certifications: to wit, the certification of the court stenographer that he took the stenographic notes (p. 55),

dated June 2, 1944; certification of Judge Carr that the stenographer was the official court stenographer and reporter on June 2, 1944 and his signature was genuine (p. 56), dated June 2, 1944; certification of the Secretary of State that Judge Carr was duly elected as circuit judge and qualified to act in that capacity (p. 57), dated May 29, 1944; certification of the Secretary of State that Victor C. Anderson was the duly elected prosecuting attorney for Ingham county and qualified to act in that capacity (p. 58), dated May 29, 1944; certification of the Secretary of State that Louis Coash was a duly elected justice of the peace and qualified to act as such when he took certain affidavits (p. 59), dated May 29, 1944; certification of the prosecuting attorney that the contents of his application for Robichaud's extradition were true and that he believed Robichaud to be in New Jersey (p. 60).

Dated June 2, 1944.